STATE OF MICHIGAN

COURT OF APPEALS

MONETTE DAVIS, Plaintiff-Appellant,	UNPUBLISHED April 17, 2014
v	No. 313908 Wayne Circuit Court
HAPPY FOUR, INC. d/b/a HAPPY 4 PARTY STORE, Defendant-Appellee.	LC No. 11-015443-NO

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

In this premises liability case, plaintiff, Monette Davis, appeals as of right the trial court's order granting summary disposition under MCR 2.116(C)(10) to defendant, Happy Four, Inc., on the basis that Happy Four did not have notice of the puddle of water in which Davis slipped and fell. We affirm.

I. FACTS

A. BACKGROUND FACTS

At her deposition, Davis testified that she and a friend entered Happy Four's party store on February 3, 2009, to purchase soft drinks. According to Davis, it was "slightly snowing and slushy outside." The store's rugs were slushy and wet. Davis retrieved soft drinks from the drink aisle and began walking to the cash register. In front of the register, Davis slipped on a three-foot-wide, clear puddle of water. Davis testified that she had been watching where she was walking, but did not see the puddle. Davis testified that there were no tracks "like somebody had been there before," and that the water did not appear to be muddy or snowy. Davis also testified that she suspected that the cashier did not know that the puddle was there.

B. PROCEDURAL HISTORY

Davis filed this premises liability action on December 12, 2011. On September 13, 2013, Happy Four moved for summary disposition under MCR 2.116(C)(10). Happy Four asserted that (1) it did not have notice of the puddle and (2) the puddle was an open and obvious hazard. Davis responded that the active negligence of Happy Four's employee created the dangerous condition, and that the puddle was not open and obvious. The trial court granted Happy Four's

motion for summary disposition, determining that there was no evidence that Happy Four had notice of the puddle. Alternatively, the trial court determined that there was no question of material fact concerning whether the puddle was open and obvious.

II. PREMISES LIABILITY

A. STANDARD OF REVIEW

This Court reviews de novo the trial court's determination on a motion for summary disposition.[1] A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.[2] A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue.[3]

To survive a motion for summary disposition under MCR 2.116(C)(10), once the nonmoving party has identified issues in which there are no disputed issues of material fact, the burden is on the plaintiff to show that disputed issues exist.[4] The nonmoving party "must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists."[5] If the nonmoving party does not make such a showing, the trial court properly grants summary disposition.[6]

B. LEGAL STANDARDS

A storekeeper must exercise reasonable prudence to render its premises reasonably safe for customers.[7] The storekeeper is liable for injuries caused by dangerous conditions that (1) the active negligence of the storekeeper or its employees caused, (2) the storekeeper or its employees actually knew about, or (3) existed for long enough that the storekeeper or its employees should have known about it.[8]

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[1] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[2] MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

[3] *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

[4] MCR 2.116(G)(4); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

[5] *Quinto*, 451 Mich at 362.

[6] *Id*. at 363.

[7] *Clark v K-mart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001).

[8] *Id*.; *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968).

C. APPLYING THE STANDARDS

Davis contends that the trial court improperly granted Happy Four's motion for summary disposition because the only inference from the evidence was that Happy Four's employees created the puddle by negligently mopping the floor. We disagree.

Inferences may support a plaintiff's case, "as long as sufficient evidence is introduced to take the inferences 'out of the realm of conjecture.'"[9] Here, there is no evidence to support Davis's theory that a store employee created the puddle by mopping the floor. No one testified that an employee had recently mopped. Further, there was no evidence that a mop bucket, mop, or other mopping equipment was near the puddle. Davis bases her theory solely on the lack of (1) footprints leading into or out of the puddle, and (2) other customers in the store while Davis was in the store. However, it is equally likely that any number of other scenarios caused the puddle. For instance, the water may have accumulated into a dip in the floor from other areas, or a customer may have spilled water in the area and left shortly before Davis arrived.

Davis did not provide sufficient evidence to support her theory that negligent mopping caused the puddle out of the realm of conjecture and into the realm of inference. Therefore, the trial court properly determined that there was no question of fact regarding active negligence.

D. OPEN AND OBVIOUS

Because we conclude that the trial court properly granted summary disposition on notice grounds, we need not address the trial court's alternative holding that the puddle was open and obvious. However, we will address it briefly.

A hazardous condition is "open and obvious" if it is reasonable to expect that an average person of ordinary intelligence would have discovered the danger upon casual inspection.[10] Here, Davis testified that she was looking carefully but did not see the puddle. However, Davis also testified that the weather conditions were wet and slushy, the store's rugs were wet and slushy, the puddle was three feet wide, and the puddle was deep enough to wet both her hands and pants. The question is not whether Davis saw the puddle, but whether an average person would have discovered it on a casual inspection. Given the size and depth of the puddle and the conditions of the weather and store's rugs, it is reasonable to expect that an average person would have discovered it on a casual inspection. Thus, even when viewing the evidence in the light most favorable to Davis, there was no genuine question of fact regarding whether the puddle was open and obvious.

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[9] *Berryman v K mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992), quoting *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

[10] *Novotney v Burger King Corp*, 198 Mich App 470, 474; 499 NW2d 379 (1993).

III. CONCLUSION

We conclude that the trial court properly granted Happy Four's motion for summary disposition under MCR 2.116(C)(10) because Davis did not provide any evidence supporting her theory that Happy Four's employees negligently created the puddle in which she slipped. We also conclude that there was no genuine question of fact regarding whether the puddle was open and obvious.

We affirm.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly